



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 11, 1997

Mr. Harold Willard  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR97-0524

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103834.

The City of Lubbock (the "city") received a request for "all corporation documents and all other documents regarding Market Lubbock Inc./Market Lubbock Economic Development Corporation." You state that some of the requested information will be released to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You have submitted samples of the requested information.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in a particular competitive situation and requires a showing of some specific actual or potential harm in such a situation. Open Records Decision No. 593 (1991). In addition, a governmental body may be deemed a competitor in the marketplace for purposes of section 552.104 when competition is authorized by law. *Id.* at 4.

You refer us to three statutes that you claim authorizes the city to compete.<sup>2</sup> One of those statutes is V.T.C.S., article 5190.6. That article provides, in part:

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>We are addressing whether the city has the right to compete because we believe that the economic development corporation's interests are the same as the city's interests. See Open Records Letter No. 96-0586 (1996).

Sec. 3 It is hereby found, determined, and declared:

...

(5) that communities in this state are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives; therefore, the issuance of revenue bonds by corporations on behalf of political subdivisions of the state as hereinafter provided for the promotion and development of new and expanded business enterprises to provide and encourage employment and the public welfare is hereby declared to be in the public interest and a public purpose.

V.T.C.S. art. 5190.6, § 3(5). This statute also determines that industrial development corporations organized pursuant to this article "shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations." *Id.* § 23(a).<sup>3</sup>

After reviewing the economic development corporation's articles of incorporation and these statutes, we conclude that the corporation is authorized to compete and that release of the requested information would harm the city in these specific competitive situations. Therefore, the city may withhold only the information revealing what has been marked as a prospect's name, financial information of a prospect, "trade secrets" of a prospect, and MLEDC prospect financial information under section 552.104 of the Government Code.

We note that, generally, section 552.104 may not be invoked when competition ceases in a particular situation. Open Records Decision No. 541 (1990). Therefore, we do not believe that, once a prospect either accepts or declines the city's offered incentives,

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<sup>3</sup>Section 380.002 of the Local Government Code provides:

(a) A home-rule municipality with a population of more than 100,000 may create programs for the grant of public money to any organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(d) of that code for the public purposes of development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development or expansion of commerce in the state.

Local Gov't Code § 380.002(a).

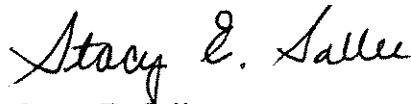
and the prospect file becomes inactive, the city may not withhold this type of information under section 552.104.<sup>4</sup>

We now address your claim that the agenda and minutes of executive sessions are excepted from disclosure in their entirety. You first state that there is authority that the MLEDC is not subject to the Open Meetings Act, chapter 551 of the Government Code. If this is the case, then, as the city has claimed no exception to disclosure under chapter 552 of the Government Code, the city may not withhold the requested agenda and minutes from disclosure. *See Gov't Code § 552.301.*

If the MLEDC is subject to chapter 551 of the Government Code and the agenda are "certified agenda" pursuant to section 551.103, then the city must withhold the agenda in their entirety. Gov't Code § 551.104(c). If the agenda are not "certified agenda" under section 551.103, then they may not be withheld in their entirety. The minutes also may not be withheld in their entirety. This office has previously concluded that the Open Meetings Act cannot, by negative implication, make confidential a record of a meeting not required to be open. Open Records Decision Nos. 563 (1990), 491 (1988). Additionally, the mere fact that information was discussed in executive session does not make it confidential under the Open Records Act. Open Records Decision No. 605 (1992). Therefore, assuming that the agenda are not "certified agenda," with the exception of information that reveals the names of prospects, financial information of prospects, "trade secrets" of prospects, and MLEDC prospect financial information, the city may not withhold the remainder of the executive session agenda or minutes.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 103834

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<sup>4</sup>The city has informed this office that no inactive prospect files exist.

cc: Ms. Debbie Bartholomew  
4820 13th Street  
Lubbock, Texas 79416  
(w/o enclosures)

Mr. Jack McCutchin, Jr.  
Crenshaw, Dupree & Milam, L.L.P.  
1500 Broadway  
Lubbock, Texas 79401  
(w/submitted documents)